

Decision 05-02-039 February 24, 2005

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Tommie Lee Jackson (P59982), Johnette Owens, Frank Jackson, Poretha Jackson, and Maurice Jackson,

Complainants,

vs.

MCI WorldCom Communications, Inc.,

Defendant.

Case 04-08-033
(Filed August 25, 2004)

OPINION GRANTING MOTION TO DISMISS

Summary

This decision dismisses the complaint for failure to show a violation of law or order upon which the Commission can grant relief.

Background

James Jackson (Jackson) filed this complaint stating that he is an inmate at Solano State Prison, and that MCI WorldCom Communications, Inc. (MCI) is the sole provider of pay telephone service to inmates of the California Department of Corrections, pursuant to a contract between MCI and the State of California. Jackson alleges that he was unable to contact his wife, children, siblings, or parents after the contract took effect. The complaint names four of these individuals, Johnette Owens (Owens), Frank Jackson, Doretha Jackson, and

Maurcie Jackson as co-complainants and lists telephone numbers for Owens, Frank and Doretha Jackson, and Maurice Jackson.

In section 1 of the attachment to the complaint, Jackson alleges that the reason he was unable to contact members of his family is that MCI “interrupted” or “prevented” collect calls to them from going through. In the complaint, itself, Jackson further alleges that once the calls were put through, MCI overcharged for them.

Jackson contends that MCI’s actions violate the following provisions of state and federal law and the United States Constitution:

- First Amendment right to association
- Fourteenth Amendment rights to equal protection and due process
- extortion statutes, by attempting to force customers to prepay for calls
- racketeering statutes
- Pub. Util. Code § 2106¹

Jackson also alleges that these violations have deliberately inflicted emotional distress on him and his family. He seeks damages of \$650,000 and an injunction ordering MCI to cease all such violations.

¹ Pub. Util. Code § 2106 provides, in relevant part:

“Any public utility which does, causes to be done, or permits any act, matter, or thing prohibited or declared unlawful, or which omits to do any act, matter, or thing required to be done, either by the Constitution, any law of this State, or any order or decision of the commission, shall be liable to the persons or corporations affected thereby or resulting therefrom. . . . *An action to recover for such loss, damage, or injury may be brought in any court of competent jurisdiction by any corporation or person.*” (Emphasis added.)

By ruling on September 3, 2004, the assigned administrative law judge (ALJ) advised that most of the allegations in the complaint parallel those pleaded in *Rudder et al. v. MCI*, Case 04-02-024 (*Rudder*), which the Commission dismissed in Decision (D.) 04-07-005 for failure to state a cause of action. The ALJ identified the unique allegations regarding overcharging (in paragraph 2 of Part F.1 of the form complaint) and directed MCI to address those in its answer.

On November 1, 2004, MCI filed its answer, together with a motion for leave to file under seal certain confidential information in attachments to the answer. In response to the allegations common to *Rudder*, MCI reiterates its answer in that case. In response to the allegations unique to this case, MCI has supplied information regarding the history of collect calls from the prison to each of the three numbers listed in the complaint.

Discussion

Rudder allegations

D.04-07-005 reviews in detail the contract between MCI and the State of California Department of General Services (DGS) by which MCI provides payphone services to state and local government agencies, including the services available to state prison inmates on a collect call basis. D.04-07-005 also reviews the means MCI has utilized to advise inmates and those they attempt to telephone that, in accordance with MCI's tariff, a collect call will only be completed in one of the following situations: (1) the customer of record at the called number is a customer of MCI; (2) MCI has a billing contract with the local exchange carrier for the called number; or (3) the customer of record at the called number has established a direct billing arrangement with MCI. Under each of these situations, MCI has a means to bill for the collect call; otherwise it does not. Pursuant to MCI's tariff, when neither the first nor second situation exists, the

customer of record for the called number must establish a Maximum Security Collect account with MCI in order to receive a collect call from an inmate. Such an account requires a \$50.00 deposit or a credit card number.

Unless one of these three situations exists, a collect call is not connected. Instead, MCI's automated calling system places a telephone call to the called number and a recording explains that an inmate has tried to call and gives instructions on how to make billing arrangements. The automated system will place up to three such calls to the same number.

The complainant in *Rudder* challenged the "block" on his mother's phone line that prevented collect calls from the prison from completing, alleging the same violations of state law, federal law and the United States Constitution that Jackson alleges. D.04-07-005 dismissed *Rudder* for failure to state a claim upon which relief can be granted, citing the requirements of Pub. Util. Code § 1702.² D.04-07-005 expressly found MCI's actions to be consistent with its DGS contract and its tariff, and explained that this Commission lacks jurisdiction either to award monetary damages for the torts alleged by complainant or to adjudicate state or federal criminal allegations such as RICO³ or extortion laws.

The "interruption" Jackson alleges is no different from the "block" alleged in *Rudder*. MCI's practices are governed by the same DGS contract and the same tariff we reviewed in *Rudder*. Thus, pursuant to Pub. Util. Code § 1702, we

² Pub.Util. Code § 1702 provides, in relevant part, that this Commission may entertain any complaint that sets "forth any act or thing done or omitted to be done by any public utility, . . . in violation or claimed to be in violation, of any provision of law or of any order or rule of the commission."

³ We infer that complainant is referring to the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §§ 1961-1968.

dismiss all allegations that substantially duplicate the allegations we examined in *Rudder*, including allegations that MCI's actions under the contract and the tariff violate the First Amendment right to association, Fourteenth Amendment rights to equal protection and due process, extortion statutes, racketeering statutes, and Pub. Util. Code § 2106.

Unique Allegations

Responding to the ALJ's direction to address, with particularity, the unique allegations in paragraph 2 of Part F.1 of the form complaint, MCI's verified answer summarizes the history of inmate collect calls to the three telephone numbers listed in the complaint and attaches copies of the MCI's supporting business records (Attachments 9, 10, and 11). The verification is signed by Michael K. Patterson, Senior Government Account Manager for MCI, Inc., which is defendant's parent corporation.

MCI's business records show dates and times that collect calls were placed from the prison to the telephone numbers for Owens, Frank and Doretha Jackson and Maurice Jackson. MCI has a billing arrangement with the local exchange carrier for each of these telephone numbers (i.e., Pacific Bell in the Sacramento and Richmond, CA areas and Southwestern Bell in the Kansas City, MO area), so collect calls to these numbers were never blocked. In some instances calls were placed but not completed, but where that occurred it happened for reasons beyond the control of MCI: (1) the line was busy; (2) there was no answer; (3) the station or called party declined the call after answering; or (4) the system hung up after answering but before approving the call.

MCI's business records also detail the charges for the calls that were accepted. The calls to the Sacramento, CA area were rated as interLATA/intrastate calls and billed at \$0.28 per minute for usage with a \$2.00

surcharge per call. The calls to the Richmond, CA area were rated as intraLATA/intrastate calls and billed at \$0.15 per minute for usage with a \$1.50 surcharge per call. These are the charges authorized under MCI's contract. None of the calls to the Kansas City, MO area resulted in billable minutes and no charges were levied.

While Jackson may have been unable to complete calls to members of his family and friends on the occasions when he desired to speak with them, that was through no fault of MCI. Likewise, while Jackson and those he called may object to the charges levied for the inmate collect calls that he successfully completed, MCI billed the rates that its contract authorizes. Therefore on the pleadings before us, and under the authority of Rule 56 which authorizes motions to dismiss, on our own motion we will dismiss these allegations for failure to state a cause of action under Pub. Util. Code § 1702.

Need for Hearing

The documentation provided in MCI's verified answer leaves no disputed issues of material fact for evidentiary hearing. Thus, no hearings are necessary and Article 2.5 of the Commission's Rules of Practice and Procedure ceases to apply to this proceeding, with the exception of the ex parte prohibition in Rule 7.

Motion for Leave to File Under Seal

By motion filed concurrently with its answer, MCI seeks leave to file under seal Attachments 9, 10, and 11 to the answer in order to prevent public disclosure of the systems MCI uses to monitor traffic carried on its network. MCI relies upon the authority of Pub. Util. Code § 583 and General Order (GO) 66-C. At the request of the ALJ, on December 15, MCI filed a declaration under penalty of perjury in support of its motion. The declaration is signed by Michael K. Patterson, Senior Government Account Manager in the Government Markets

Department of MCI, Inc., which is MCI's parent corporation. With regard to these claims, the Patterson's declaration states that the records:

show how MCI manages and documents services provided pursuant to its contract with the State of California. Such contracts are generally subject to the competitive bidding process. Public disclosure of these records can place MCI at a disadvantage with respect to other carriers that participate in the bidding process. (Patterson declaration, paragraph 10.)

We need not reach the merits of this claim, since the declaration raises an additional and more comprehensive ground for sealing Attachments 10-12 based on their content, which contains customer proprietary network information. While MCI should have raised this ground in its motion, we will overlook that omission and read the two pleadings together so as to reach a "just, speedy, and inexpensive" resolution of this case, under the authority of Rule 87 of the Commission's Rules of Practice and Procedure.

As MCI states, federal law defines customer proprietary network information to include information that relates to the quantity, technical configuration, type, destination, location and amount of use of a telecommunications service. The Attachments contain information that shows "the date, time, originating point, terminating number, and duration of station-to-station inmate collect calls" to the each telephone number. (Patterson declaration, paragraph 8.) Because MCI has provided services to each customer of record for the three telephone numbers at issue in this complaint, each of them may be considered a customer for the purposes of this analysis.

The privacy protections inherent in federal law over-ride the nominal public interest in divulging this information and we will grant the motion.

Comments on Draft Decision

The draft decision of the ALJ in this matter was mailed to the parties in accordance with Section 311(g)(1) of the Public Utilities Code and Rule 77.7 of the Rules of Practice and Procedure. No comments were received.

Assignment of Proceeding

Geoffrey F. Brown is the Assigned Commissioner and Jean Vieth is the assigned ALJ in this proceeding.

Findings of Fact

1. MCI's billing arrangement requirement is in its published tariffs, as well as its contract with DGS.
2. MCI has a billing arrangement with the local exchange carrier for Owens, Frank and Doretha Jackson, and Maurice Jackson, so collect calls to their telephone numbers were never blocked.
3. The collect calls to the Sacramento, CA area and the collect calls to the Richmond, CA area were rated and billed in conformance with MCI's contract. None of the calls to the Kansas City, MO area resulted in billable minutes and no charges were levied.
4. MCI has acted in conformity with its contract and tariff.
5. Jackson seeks damages and an injunction.

Conclusions of Law

1. The complaint should be decided on the pleadings, since no triable issue of fact has been established.
2. No hearing is necessary.
3. Neither complainant nor the named co-complainants have shown any violation of law or order over which this Commission has jurisdiction.

4. The Complaint should be dismissed for failure to state a claim under § 1702, effective immediately.

O R D E R

IT IS ORDERED that:

1. The complaint in Case (C.) 04-08-033 is dismissed.
2. The November 1, 2004 motion of MCI WorldCom Communications, Inc. (MCI) for leave to file confidential information under seal is granted.
3. C.04-08-033 is closed.

This order is effective today.

Dated February 24, 2005, at San Francisco, California.

MICHAEL R. PEEVEY
President
GEOFFREY F. BROWN
SUSAN P. KENNEDY
DIAN M. GRUENEICH
Commissioners